

SENATE BILL NO. 21

INTRODUCED BY GRIMES

BY REQUEST OF THE LEGISLATIVE COUNCIL

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING DAMAGES THAT MAY BE GRANTED FOR MEDICAL MALPRACTICE THAT REDUCES A PATIENT'S CHANCE OF RECOVERY; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Liability of health care provider for reduced chance of recovery caused by malpractice.** (1) For purposes of a malpractice claim, as defined in 27-6-103, damages may be awarded against a health care provider, as defined in 27-6-103, if a negligent act or omission during diagnosis or treatment for a medical condition reduces a patient's chance of recovering and the negligent act or omission is a contributing cause of:

- (a) death;
- (b) survival for a shorter period of time;
- (c) no recovery;
- (d) a recovery that is of lesser extent or quality or that takes longer to occur; or
- (e) other injury.

(2) The damages must be determined based on which of the events referred to in subsections (1)(a) through (1)(e) occurred and the resulting types of injury, damage, and loss.

~~(3) Damages awarded must be the difference between the percentage chance of recovering prior to the negligent act or omission and the percentage chance of recovering after the negligent act or omission, multiplied by the total damages proved under subsection (2).~~

(3) (A) IF THE EVIDENCE ESTABLISHES THAT THE CHANCE OF RECOVERING PRIOR TO THE NEGLIGENT ACT OR OMISSION WAS MORE LIKELY THAN NOT, THE DAMAGES AWARDED MUST BE 100% OF THE DAMAGES DETERMINED UNDER SUBSECTION (2).

(B) IF THE EVIDENCE ESTABLISHES THAT THE CHANCE OF RECOVERING PRIOR TO THE NEGLIGENT ACT OR OMISSION WAS NOT MORE LIKELY THAN NOT, THE DAMAGES AWARDED MUST BE THE DIFFERENCE BETWEEN THE CHANCE

1 OF RECOVERING PRIOR TO THE NEGLIGENT ACT OR OMISSION AND THE CHANCE OF RECOVERING AFTER THE NEGLIGENT
2 ACT OR OMISSION MULTIPLIED BY THE TOTAL DAMAGES DETERMINED UNDER SUBSECTION (2).

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4 NEW SECTION. SECTION 2. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE JULY 1, 2005.

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6 NEW SECTION. Section 3. Applicability. [This act] applies to ~~malpractice claims that arise~~ CAUSES
7 OF ACTION THAT ARISE ON OR after [the effective date of this act].

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